

Jun.12. 2006 2:00PM 9547233871

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No. 2658 P. 1

JUN 12 2006



**FAX TRANSMITTAL SHEET**

Motorola, Inc.  
Law Department - MD 1610  
8000 W. Sunrise Blvd.  
Plantation, FL 33322  
Telephone: (954) 723-6449  
Fax: (954) 723-3871

**32** Number of Pages (including this page)

Date: June 12, 2006  
To Examiner: Phuong, Dai  
Location: United States Patent and Trademark Office  
Fax No.: Centralized Fax Number: 1 (571) 273-8300  
From: Larry G. Brown - Registration No. 45,834  
Attorney's Docket No. CB12083JME - Robertson, Jr., et al. Confirmation No. 3837

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**MESSAGE:**

In connection with the above-identified Patent Application, please find attached herewith the following documents:

- 1 page Transmittal Form;
- 1 page Fee Transmittal (in duplicate);
- 2 pages Transmittal Letter for Appcal Brief (in duplicate); and
- 24 pages Appcal Brief.

**PLEASE DELIVER THESE PAPERS TO:**

EXAMINER:	Phuong, Dai
GROUP ART UNIT:	2617
SERIAL NO.:	10/741,653
FILED:	December 19, 2003
INVENTOR:	WILLIAM H. ROBERTSON, JR.

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Date: June 12, 2006

Signature:

Printed Name: Larry G. Brown

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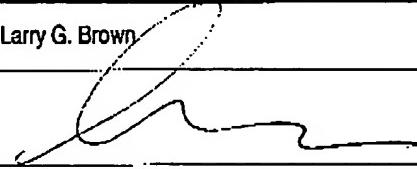
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No. 2658 P. 2

JUN 12 2006

<b>TRANSMITTAL FORM</b> (to be used for all correspondence after initial filing)		Application Number	10/741,653
		Filing Date	December 19, 2003
		First Named Inventor	William H. Robertson, Jr.
		Group Art Unit	2617
		Examiner Name	Phuong, Dai
Total Number of Pages in this Submission	31	Attorney Docket Number	CE12083JME

<b>ENCLOSURES</b>		
(check all that apply)		
<input checked="" type="checkbox"/> Fee Transmittal Letter	<input type="checkbox"/> Assignment Papers (for an Application)	<input type="checkbox"/> After Allowance Communication to Group
<input type="checkbox"/> Fee Attached	<input type="checkbox"/> Drawing(s)	<input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences
<input type="checkbox"/> Amendment/Reply	<input type="checkbox"/> Licensing-Related papers	<input checked="" type="checkbox"/> Appeal Communication to Group (Appeal Notice, Brief, Reply Brief)
<input type="checkbox"/> Alter Final	<input type="checkbox"/> Petition	<input type="checkbox"/> Proprietary Information
<input type="checkbox"/> Affidavits/Declaration(s)	<input type="checkbox"/> Petition to Convert to a Provisional Application	<input type="checkbox"/> Status Letter with appropriate copies
<input type="checkbox"/> Extension of time Request	<input type="checkbox"/> Power of Attorney, Revocation, Change of Correspondence	<input checked="" type="checkbox"/> Other Enclosure(s) (please identify below) <input checked="" type="checkbox"/> Transmittal Letter for Brief on Appeal
<input type="checkbox"/> Express Abandonment Request	Address	
<input type="checkbox"/> Information Disclosure Statement	<input type="checkbox"/> Terminal Disclaimer	
<input type="checkbox"/> Certified Copy of Priority Documents	<input type="checkbox"/> Request for Refund	
<input type="checkbox"/> Response to Missing Parts/ Incomplete Application	<input type="checkbox"/> CD, Number of CDs	
<input type="checkbox"/> Response to Missing Parts Under 37 CFR 1.52 or 1.53	Remarks	
	X Facsimile Transmittal	

<b>SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT</b>			
Firm or Individual	Larry G. Brown	Registration No.	45,834
Signature			
Date	June 12, 2006		

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Signature			
	Date	June 12, 2006	

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JUN 12 2006

1402

<b>FEET TRANSMITTAL</b>		<i>Complete If Known</i>	
Patent fees are subject to annual revision <input type="checkbox"/> Applicant claims small entity status. See 37 CFR 1.27		Application Number	10/741,653
		Filing Date	December 19, 2003
		First Named Inventor	William H. Robertson, Jr.
		Examiner Name	Phuong, Dai
		Group Art Unit	2617
TOTAL AMOUNT OF PAYMENT	(\$ 500.00)	Attorney Docket No.	CE12083JME

<b>METHOD OF PAYMENT (check all that apply)</b>					<b>FEES CALCULATION (continued)</b>																																																																																																																																																																																																																			
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ADDITIONAL FEES</b> <table border="1"> <thead> <tr> <th>Large Entity</th> <th>Small Entity</th> </tr> <tr> <th>Fee Code</th> <th>Fee (\$)</th> <th>Fee Code</th> <th>Fee (\$)</th> <th>Fee Description</th> </tr> </thead> <tbody> <tr><td>1051</td><td>130</td><td>2051</td><td>65</td><td>Surcharge - late filing fee or oath</td></tr> <tr><td>1052</td><td>50</td><td>2052</td><td>25</td><td>Surcharge - late Provisional filing</td></tr> <tr><td>1053</td><td>130</td><td>1053</td><td>130</td><td>Non-English specification</td></tr> <tr><td>1812</td><td>2520</td><td>1812</td><td>2520</td><td>For filing a request for ex parte Reexamination</td></tr> <tr><td>1804</td><td>920*</td><td>1804</td><td>920*</td><td>Requesting publication of SIR prior to Examiner action</td></tr> <tr><td>1805</td><td>1840*</td><td>1805</td><td>1840*</td><td>Requesting publication of SIR after Examiner action</td></tr> <tr><td>1251</td><td>110</td><td>2251</td><td>55</td><td>Extension for reply within first month</td></tr> <tr><td>1252</td><td>430</td><td>2252</td><td>215</td><td>Extension for reply within second month</td></tr> <tr><td>1253</td><td>980</td><td>2253</td><td>490</td><td>Extension for reply within third month</td></tr> <tr><td>1254</td><td>1530</td><td>2254</td><td>765</td><td>Extension for reply within fourth month</td></tr> <tr><td>1255</td><td>2080</td><td>2255</td><td>1040</td><td>Extension for reply within fifth month</td></tr> <tr><td>1401</td><td>340</td><td>2401</td><td>170</td><td>Notice of Appeal</td></tr> <tr><td>1402</td><td>340</td><td>2402</td><td>170</td><td>Filing a brief in support of an appeal</td></tr> <tr><td>1403</td><td>300</td><td>2403</td><td>150</td><td>Request for oral hearing</td></tr> <tr><td>1451</td><td>1510</td><td>1451</td><td>1510</td><td>Petition to institute a public use proceeding</td></tr> <tr><td>1452</td><td>110</td><td>2452</td><td>55</td><td>Petition to revive - unavoidable</td></tr> <tr><td>1453</td><td>1370</td><td>2453</td><td>685</td><td>Petition to revive - unintentional</td></tr> <tr><td>1501</td><td>1370</td><td>2501</td><td>685</td><td>Utility issue fee (or reissue)</td></tr> <tr><td>1502</td><td>490</td><td>2502</td><td>245</td><td>Design issue fee</td></tr> <tr><td>1503</td><td>660</td><td>2503</td><td>330</td><td>Plant issue fee</td></tr> <tr><td>1460</td><td>130</td><td>1460</td><td>130</td><td>Petitions to the Commissioner</td></tr> <tr><td>1807</td><td>50</td><td>1807</td><td>50</td><td>Processing fee under 37 CFR 1.17(e)</td></tr> <tr><td>1806</td><td>180</td><td>1806</td><td>180</td><td>Submission of IDS</td></tr> <tr><td>8021</td><td>40</td><td>8021</td><td>40</td><td>Recording each patent assignment per property (times number of properties)</td></tr> <tr><td>1809</td><td>790</td><td>2809</td><td>395</td><td>Filing a submission after final rejection (37 CFR § 1.129(s))</td></tr> <tr><td>1810</td><td>790</td><td>2810</td><td>395</td><td>For each additional invention to be examined (37 CFR § 1.129(b))</td></tr> <tr><td>1801</td><td>790</td><td>2801</td><td>395</td><td>Request for Continued Examination (RCE)</td></tr> <tr><td>1802</td><td>900</td><td>1802</td><td>900</td><td>Request for expedited examination of a design application</td></tr> <tr> <td colspan="5">           Previously Paid**            Total Claims <input type="checkbox"/> - <b>20</b> = <input type="checkbox"/> <b>18</b> X <b>18</b> = <input type="checkbox"/>            Independent Claims <input type="checkbox"/> - <b>3</b> = <input type="checkbox"/> <b>8</b> X <b>88</b> = <input type="checkbox"/>              Multiple Dependent <input type="checkbox"/> <b>300</b> = <input type="checkbox"/> </td> <td colspan="5"> <b>Fee from Below</b>  <b>Fee Description</b>            Large Entity Fee Code (\$)            Small Entity Fee Code (\$)         </td> </tr> <tr> <td colspan="5">           Large Entity Fee Code (\$)            Small Entity Fee Code (\$)         </td> <td colspan="5">           Fee Description            1202 18 2202 9 Claims in excess of 20            1201 88 2201 44 Independent claims in excess of 3            1203 300 2203 150 Multiple dependent claim, if not paid            1204 68 2204 44 * Reissue independent claims over original patent              1205 18 2205 8 * Reissue claims in excess of 20 and over original Patent         </td> </tr> <tr> <td colspan="5">           SUBTOTAL (2) (\$ 0)         </td> <td colspan="5">           SUBTOTAL (3) (\$ 500.00)         </td> </tr> <tr> <td colspan="5">           ** or number previously paid, if greater. 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Brown</b> </td> <td colspan="5">           Complete (if applicable)            Registration No. <b>45,834</b> Telephone <b>954-723-4285</b> </td> </tr> <tr> <td colspan="5">           Signature  </td> <td colspan="5">           Date <b>June 12, 2006</b> </td> </tr> </tbody></table>					Large Entity	Small Entity	Fee Code	Fee (\$)	Fee Code	Fee (\$)	Fee Description	1051	130	2051	65	Surcharge - late filing fee or oath	1052	50	2052	25	Surcharge - late Provisional filing	1053	130	1053	130	Non-English specification	1812	2520	1812	2520	For filing a request for ex parte Reexamination	1804	920*	1804	920*	Requesting publication of SIR prior to Examiner action	1805	1840*	1805	1840*	Requesting publication of SIR after Examiner action	1251	110	2251	55	Extension for reply within first month	1252	430	2252	215	Extension for reply within second month	1253	980	2253	490	Extension for reply within third month	1254	1530	2254	765	Extension for reply within fourth month	1255	2080	2255	1040	Extension for reply within fifth month	1401	340	2401	170	Notice of Appeal	1402	340	2402	170	Filing a brief in support of an appeal	1403	300	2403	150	Request for oral hearing	1451	1510	1451	1510	Petition to institute a public use proceeding	1452	110	2452	55	Petition to revive - unavoidable	1453	1370	2453	685	Petition to revive - unintentional	1501	1370	2501	685	Utility issue fee (or reissue)	1502	490	2502	245	Design issue fee	1503	660	2503	330	Plant issue fee	1460	130	1460	130	Petitions to the Commissioner	1807	50	1807	50	Processing fee under 37 CFR 1.17(e)	1806	180	1806	180	Submission of IDS	8021	40	8021	40	Recording each patent assignment per property (times number of properties)	1809	790	2809	395	Filing a submission after final rejection (37 CFR § 1.129(s))	1810	790	2810	395	For each additional invention to be examined (37 CFR § 1.129(b))	1801	790	2801	395	Request for Continued Examination (RCE)	1802	900	1802	900	Request for expedited examination of a design application	Previously Paid** Total Claims <input type="checkbox"/> - <b>20</b> = <input type="checkbox"/> <b>18</b> X <b>18</b> = <input type="checkbox"/> Independent Claims <input type="checkbox"/> - <b>3</b> = <input type="checkbox"/> <b>8</b> X <b>88</b> = <input type="checkbox"/>  Multiple Dependent <input type="checkbox"/> <b>300</b> = <input type="checkbox"/>					<b>Fee from Below</b> <b>Fee Description</b> Large Entity Fee Code (\$) Small Entity Fee Code (\$)					Large Entity Fee Code (\$) Small Entity Fee Code (\$)					Fee Description 1202 18 2202 9 Claims in excess of 20 1201 88 2201 44 Independent claims in excess of 3 1203 300 2203 150 Multiple dependent claim, if not paid 1204 68 2204 44 * Reissue independent claims over original patent  1205 18 2205 8 * Reissue claims in excess of 20 and over original Patent					SUBTOTAL (2) (\$ 0)					SUBTOTAL (3) (\$ 500.00)					** or number previously paid, if greater. 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UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT(S)	William H. Robertson, Jr.	CONFIRMATION NO.:	3837
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TITLE:	LATCHING MECHANISM AND METHOD OF OPERATION THEREOF		

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Date:	June 12, 2006
Signature: Typed or Printed Name:	Larry Brown

TRANSMITTAL LETTER FOR BRIEF ON APPEAL

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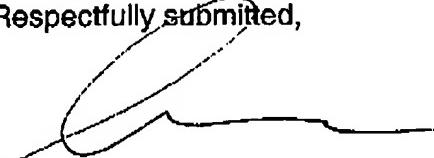
Sir:

Enclosed please find one copy of an Appeal Brief filed on behalf of the applicants in the matter of the above entitled application. This Brief is filed pursuant to 37 CFR § 1.192 and following the Final Rejection dated March 22, 2006 and the Notice of Appeal filed by Applicant on June 8, 2006.

06/13/2006 CNGUYEN2 00000044 502117 10741653  
01 FC:1402 500.00 DA

The Commissioner is authorized to charge the \$500.00 requisite fee for filing the enclosed Brief to Motorola, Inc., Deposit Account No. 502117. Any overpayment should be credit to the same Deposit Account.

Respectfully submitted,



SEND CORRESPONDENCE TO:

Motorola, Inc.

Customer Number: 24273

By: Larry G. Brown  
Attorney of Record  
Reg. No. 45,834  
Telephone: (954) 723-4295.  
Fax No.: (954) 723-3871

**UNITED STATES PATENT AND TRADEMARK OFFICE**

APPLICANT(S)	William H. Robertson, Jr.	CONFIRMATION NO.:	3837
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**TRANSMITTAL LETTER FOR BRIEF ON APPEAL**

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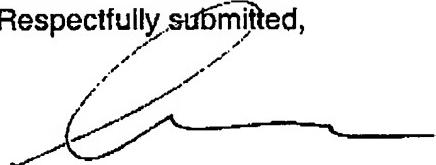
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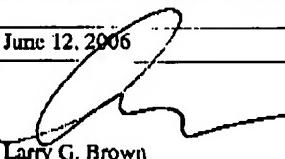
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CE12083JME

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

APPLICANT: William H. Robertson, Jr. ART UNIT: 2617  
APPLN. NO.: 10/741,653 EXAMINER: Phuong, Dai  
FILED: December 19, 2003  
TITLE: LATCHING MECHANISM AND METHOD OF OPERATION THEREOF

CERTIFICATE OF FAX TRANSMITTAL	
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Date:	June 12, 2006
Signature: Typed or Printed Name:	 Larry G. Brown

**APPEAL BRIEF**

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Attention: **Board of Patent Appeals and Interferences**

Dear Chief Administrative Patent Judge:

This Appeal Brief is in furtherance of the Notice of Appeal transmitted via facsimile on June 8, 2006.

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The fees required under 37 C.F.R. § 1.17(c) for filing this Appeal Brief have been authorized in the accompanying forms.

This brief is being transmitted by facsimile pursuant to 37 C.F.R. § 1.6(d).

This brief contains items under the headings listed in the following Table of Contents, as set forth in 37 C.F.R. § 1.192(c).

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**I. REAL PARTY IN INTEREST**

The real party of interest is Motorola, Inc., a Delaware corporation.

**II. RELATED APPEALS AND INTERFERENCES**

There are no related appeals or interferences.

**III. STATUS OF CLAIMS**

This is an appeal from the final rejection of claims 1-3 and 6-28 of the above-referenced application.

**A. TOTAL NUMBER OF CLAIMS IN APPLICATION**

There are a total of 28 claims in the application.

**B. STATUS OF ALL THE CLAIMS**

1. Claims allowed: none
2. Claims objected to: 4 and 5
3. Claims rejected: 1-3 and 6-28

**C. CLAIMS ON APPEAL**

The claims on appeal are: 1-3 and 6-28.

**IV. STATUS OF AMENDMENTS**

A Final Rejection was mailed on March 22, 2006 in response to an Amendment filed on January 31, 2006. The Amendment and arguments were considered by the Examiner but were deemed unpersuasive and moot in view of

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new grounds of rejection. Applicants faxed a Notice of Appeal on June 8, 2006.

This Appeal Brief is submitted in support of the Notice of Appeal.

#### V. SUMMARY OF THE CLAIMED INVENTION

Although specification citations are inserted below in accordance with C.F.R. 1.192(c), these reference numerals and citations are merely examples of where support may be found in the specification for the terms used in this section of the brief. There is no intention to in any way suggest that the terms of the claims are limited to the examples in the specification. Although, as demonstrated by the reference numerals and citations below, the claims are fully supported by the specification as required by law, it is improper under the law to read limitations from the specification into the claims. Pointing out specification support for the claim terminology, as is done here to comply with rule 1.192(c), does not in any way limit the scope of the claims to those examples from which they find support. Nor does this exercise provide a mechanism for circumventing the law precluding reading limitations into the claims from the specification. In short, the reference numerals and specification citations are not to be construed as claim limitations or in any way used to limit the scope of the claims.

The claimed subject matter pertains to a latching mechanism (105) for assembly of a housing (110) of an electronic device (100) and a method (500) of operating the mechanism (105). In particular, the latching mechanism (105) can

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include a latch element (120) and a receiving element (131) contained within the housing (110) (see FIGs. 1-4, page 4, lines 8-10 and page 5, lines 3-7). The receiving element (131) can include a recess (140) for engaging the latch element (120) and can include at least one audio port (122) for providing an audio channel (190) for the electronic device (100) (see FIGs. 1-4 and page 5, lines 15-16 and page 6, lines 1-4). In another arrangement, the latching mechanism (105) can include a secondary latch element (124) in which at least a portion of the housing (110) is mechanically coupled between the latch element (120) and the secondary latch element (124) (see FIGs. 1-4 and page 12, lines 21-23).

In another arrangement, the housing (110) can include a fixed housing portion (112, 113) and a removable housing portion (114) having the recess (140) and at least one audio port (122) that is part of the recess (140) (see FIGs. 1-4, page 4, lines 10-13 and page 6, lines 1-4). The latching mechanism (105) can be used to assemble the removable housing portion (114) to the fixed housing portion (112, 113) (see FIG. 5 (step 512) and page 14, lines 21-23). Moreover, the latch element (120) can be rotatably coupled to the removable housing portion (114), and the latch element (120) rotation can include an orientation for engaging the latch element (120) to assemble the removable housing portion (114) to the fixed housing portion (112, 113) (see FIGs. 1-4 and page 12, line 6 to page 13, line 6). Also in this arrangement, the audio port (122) is part of the audio channel (190),

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and the audio channel (190) is formed when the removable housing portion (114) is assembled to the fixed housing portion (112, 113) (see FIG. 4 and page 13, lines 7-21).

In this embodiment, a gap (188) can be formed between the latch element (120) and the recess (131) when the removable housing portion (114) is assembled to the fixed housing portion (112, 113), and the audio channel (190) can include the gap (188) (see FIG. 4 and page 13, lines 16-20). Additionally, a keypad (116) can be assembled between the fixed housing portion (112, 113) and the removable housing portion (114) (see FIGs. 1 and 4 and page 6, lines 18-22).

## VI. ISSUES ON APPEAL

Whether claims 1-3 and 6-13 are patentable under 35 U.S.C. 103(a) over U.S. Patent Application Publication No. 2004/0203501 to Johnson, et al (Johnson) in view of U.S. Patent Application Publication No. 2005/0014537 to Gammon, et al (Gammon).

Whether claims 14-17, 19-21 and 23-28 are patentable under 35 U.S.C. 102(b) over U.S. Patent No. 5,469,505 to Gattey, et al. (Gattey).

Whether claims 18 and 22 are patentable under 35 U.S.C. 103(a) over Gattey in view of Gammon.

## VII. GROUPING OF CLAIMS

For purposes of this Appeal, the Applicants present the following grouping of

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claims:

1. Claims 1-3 and 6-13 are a group, with the appeal as to the ground of rejection being based on claim 1.
2. Claims 14-18 are part of another group, with the appeal as to the ground of rejection being based on claim 14.
3. Claims 19-28 are part of another group, with the appeal as to the ground of rejection being based on claim 19.

### VIII. ARGUMENT

*The recitations of Johnson, Gammon and Gattey do not render the invention of claims 1-3 and 6-28 unpatentable.*

A brief summary of the Johnson, Gammon and Gattey references may be helpful. Johnson describes a mobile telephone (150) that includes an elongated housing (180), which includes a carabiner latch (154) pivotally attached at a battery door compartment (156) at the rear side of the housing (180) (see FIGs. 13-15 and paragraph 0041). Moreover, the latch (154) is adapted to be stored within a door recess (167) for receiving the latch (154) for storage purposes (see FIGs. 13-15 and paragraph 0043). The latch (154) can be swung outwardly away from the housing (180) to a variety of use positions (see FIGs. 13-15 and paragraph 0043). The latch (154) also has a hook portion that enables a user to attach the telephone to a suitable apparatus (see FIG. 15 and paragraph 0015). Johnson never

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mentions anything related to audio when discussing the latch (154), the door recess (167) or any other related structure.

Gammon discloses a mobile terminal that includes a housing (23), an electronic circuit (printed circuit board 182) and a speaker assembly (32) positioned in the housing (23) (see Abstract and paragraph 0053). The housing (23) includes an earpiece opening (442) (see FIG. 4 and paragraph 0065). Further, the speaker assembly (32) includes a first speaker (154) positioned adjacent a first side of the electronic circuit (182) and a second speaker (155) positioned adjacent the first speaker (154) on the first side of the electronic circuit (182) (see Abstract and FIG. 2). A grommet (184), which is positioned in the housing (23), is configured to receive the first speaker (154) and the second speaker (155), which are also positioned in the grommet (184) (see Abstract, paragraph 0054 and FIG. 2).

Gattey describes a communication headset 10 that includes a resilient headband (12) and a housing (14) adjustably connected to one end of the headband (12) (see FIG. 1 and col. 2, lines 63-67). It should be noted that the headset (10) of Gattey is expressly designed to be worn over the head of a user (see Abstract and col. 2, lines 8-11 and lines 63-65). The housing (14) includes a recess (36), and a hollow stem (38) having retaining barbs (40) that extends from the recess (36) of the housing (14) (see FIG. 4 and col. 3, lines 32-38).

Additionally, a speaker shell (42) is pivotally and rotationally retained by the housing

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(14) when a retaining clip (48) engages the retaining barbs (40) on the stem (38) and a thin spherical portion (44) of the shell (42) (see FIG. 4 and col. 3, lines 41-45). A speaker (60) is positioned in the shell (42), and speaker wires (64) electrically connect the speaker (60) to circuitry in the housing (14) by passing through the stem (38) (see FIG. 4 and col. 4, lines 5-13). Holes (67) are provided in the rear of the shell (42) to provide acoustic relief to the generally closed speaker enclosure (see FIG. 4 and col. 4, lines 14-16). Moreover, holes (66) of cover (56) are provided to acoustically couple the speaker (60) with the ear of the headset user (see FIG. 4 and col. 4, lines 13-14).

It is well settled that in order for a claim to be anticipated under 35 U.S.C. § 102, each and every element of the claimed invention must be disclosed in a single prior art reference. Orthokinetics, Inc. v. Safety Travel Chairs, Inc., 806 F.2d 1565, 1574 (Fed. Cir. 1986). Whether the reference discloses every element of the invention, and also whether the reference and the claimed invention are the same, is to be determined by considering how persons of ordinary skill in the art interpret the reference. Scripps Clink & Research Fdm. v. Genentech, Inc., 927 F.2d 1565, 1576 (Fed. Cir. 1991).

Additionally, the best defense against hind-sight based obviousness analysis is the rigorous application of the requirement for a showing of a teaching, or motivation to combine the prior art references. Ecolochem v. Southern California

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Edison Co., 227 F.3d 1361, 1371 (Fed. Cir. 2000). "Combining prior art references without evidence of such a suggestion, teaching or motivation simply takes the inventor's disclosure as a blueprint for piecing together the prior art to defeat patentability--the essence of hindsight." Id. at 1371-1372. There must also be some reasonable expectation of success for the suggested combination. In re Dow Chem. Co., 837 F.2d 469,473 (Fed. Cir. 1988).

Independent claim 1 recites the feature of a receiving element contained within the housing in which the receiving element includes a recess for engaging the latch element and at least one audio port for providing an audio channel for the electronic device. The Examiner has attempted to equate the door recess (167) of Johnson with the receiving element (131) of the present invention (see page 7 of the Final Office Action of March 22, 2006). Applicant respectfully disagrees with the Examiner's rejection that it would be obvious to one of skill in the art to modify the handset of Johnson with the earpiece port (442) of Gammon (it is believed that the Examiner is referring to earpiece port 442 as an audio port, as Applicant was unable to locate reference numeral 422 in the drawings).

In particular, Johnson is not at all concerned with the porting of audio in its discussion of the latch (154), the door recess (167) or any other related structure. Johnson is directed to providing a latch that can permit a handset to be attached to a loop, strap or ring in an inverted manner (see Abstract). There is simply no

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reason to desire to have a speaker and/or an audio channel positioned in the door recess (167) of Johnson. In fact, the terms "audio" and "acoustic" are completely absent from the Johnson reference. Moreover, even if such a configuration were attempted, the latch (154) itself would interfere with the proper passage of audio emanating from the audio port. That is, when the latch (154) would be secured in the door recess (167), which more than likely would occur when the user is in a call, the latch (154) would block the flow of audio from the hypothetical port positioned in the door recess (167). The Johnson and Gammon references also do not present a solution as to how this obstacle could be overcome, and the Examiner is not permitted to rely on the structure in the present invention to do so (see In re Kuehl, 475 F.2d 658 (C.C.P.A. 1973). As such, Applicant submits that the Examiner's proposed combination does not present a reasonable expectation of success.

Independent claim 14 recites the element that the removable housing portion has a recess and at least one audio port in which the audio port is part of the recess and that the audio port is part of an audio channel formed when the removable housing portion is assembled to the fixed housing portion. Independent claim 19 recites similar features. Applicant submits that Gattey does not show, describe or even suggest such features. Specifically, Applicant notes that the Examiner has concluded that the speaker shell (42) of Gattey is equivalent to the removable housing portion (114) of the present invention and that the holes (67)

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and/or the stem (38) of Gattey are equivalent to the audio port (122) of the present invention. It is clear from FIG. 4 that the stem (38) of Gattey is not part of the speaker shell (42), as it is actually part of the housing (14).

It is also clear that the holes (67) of Gattey are not part of an audio channel, as contemplated by the invention and as understood by one of skill in the art. The holes (67), in contrast, are merely for providing acoustic relief to the speaker enclosure. The audio channel in Gattey comprises the structure that is on the broadcast side of the speaker (60), particularly when one considers the statement that the "holes (66) are provided in cover (56) to acoustically couple speaker (60) with the ear of the headset user (see col. 4, lines 13-14). This principle also precludes the stem (38) from being considered an audio port, as that term would be understood by one of skill in the art. The stem (38) is simply designed to provide a passage for electrical wiring, not for porting audio.

Dependent claims 18 and 22 further recite the element that a keypad is assembled between the fixed housing portion and the removable housing portion. Applicant submits that there is simply no motivation to combine the keypad of Gammon with the headset of Gattey. Those of skill in the art realize that a headset is meant to be worn over the head of a user to allow the user to conduct hands-free voice conversations. Trying to implement a keypad into the headset of Gattey would defeat the hands-free nature of a headset and would be an inefficient use of

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resources.

Based on the discussion above, Applicant submits that the Johnson, Gammon and Gattey references simply do not show, describe or suggest, either individually or in combination with one another, the claimed invention. As such, Applicants believe that the rejections of independent claims 1, 14 and 19 are improper and that these claims are patentable over the prior art. In addition, Applicants submit that the claims that depend from these independent claims are patentable over the prior art, both in view of their dependencies on the independent claims and their own independent patentability.

### **Conclusion**

For the claims to be unpatentable under § 102, each and every element of the claimed invention must be disclosed in a single prior art reference. Moreover, for claims to be unpatentable under § 103, there must be some suggestion or motivation to combine the prior art references, and the combination of references must show each and every element. Because every element of the claimed invention is not disclosed by the Gattey reference and because there is no suggestion to combine the Johnson and Gammon references, Applicant contends that the claims on appeal are patentable.

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For the reasons set forth above, and as is apparent from a review of the above-cited references, the claims on appeal present patentable subject matter such that reversal of the rejection is appropriate.

Respectfully submitted,

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June 12, 2006

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## IX. CLAIMS APPENDIX

1. (original) A latching mechanism for assembly of a housing of an electronic device, comprising:
  - a latch element; and
  - a receiving element contained within the housing, wherein the receiving element comprises:
    - a recess for engaging the latch element, and
    - at least one audio port for providing an audio channel for the electronic device.
2. (original) The latching mechanism as defined in claim 1, further comprising:
  - a gap formed between the latch element and the receiving element, wherein the audio channel further comprises the gap.
3. (original) The latching mechanism as defined in claim 1, wherein the latch element is rotatably coupled to the recess, and further wherein the latch element rotation includes a first orientation for disengaging the latch element from the housing and a second orientation for engaging the latch element within the housing.

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4. (original) The latching mechanism as defined in claim 3, wherein the latch element comprises a protrusion, wherein the recess further comprises a similarly-shaped opening, and further wherein the protrusion aligns with the similarly-shaped opening in the second orientation.

5. (original) The latching mechanism as defined in claim 4, wherein the protrusion misaligns with the similarly-shaped opening in the first orientation.

6. (original) The latching mechanism as defined in claim 1, further comprising:

a secondary latch element, wherein at least a portion of the housing is mechanically coupled between the latch element and the secondary latch element, wherein the secondary latch element comprises at least one secondary latch element audio port aligned with the at least one audio port, and further wherein the audio channel further comprises the at least one secondary latch element audio port.

7. (original) The latching mechanism as defined in claim 6, wherein the electronic device further comprises:

an audio element, wherein at least a portion of the secondary latch

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element is mechanically coupled between the audio element and at least a portion of the housing.

8. (original) The latching mechanism as defined in claim 8, wherein the audio element generates an audio output, and further wherein the audio output is transmitted through the audio channel.

9. (original) The latching mechanism as defined in claim 7, wherein the audio element receives an audio input through the audio channel.

10. (original) The latching mechanism as defined in claim 6, wherein the secondary latch element comprises:

· an audio plate coupled between the latch element and at least a portion of the housing, wherein the audio plate includes at least one audio plate audio port, wherein the at least one secondary latch element audio port comprises the at least one audio plate audio port.

11. (original) The latching mechanism as defined in claim 10, wherein the secondary latch element further comprises:

a seal coupled between the audio element and at least a portion of

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the housing, wherein the seal includes at least one seal audio port aligned with the at least one audio plate audio port, and wherein the at least one secondary latch element audio port further comprises the at least one seal audio port.

12. (original) The latching mechanism as defined in claim 1, wherein the housing further comprises:

a fixed housing portion; and

a removable housing portion, wherein the receiving element is contained within the removable housing portion, and further wherein the removable housing portion is assembled to the fixed housing portion when the latch element is engaged within the housing.

13. (original) The latching mechanism as defined in claim 12, wherein the electronic device further comprises a keypad, and further wherein the keypad is assembled between the fixed housing portion and the removable housing portion and the removable housing portion when the latch element is engaged within the housing.

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14. (previously presented) An electronic device, comprising:
- a housing, comprising:
- a fixed housing portion;
- a removable housing portion having a recess and at least one audio port, wherein the audio port is part of the recess;
- a latching mechanism for assembling the removable housing portion to the fixed housing portion, wherein the latch mechanism comprises:
- a latch element rotatably coupled to the removable housing portion, wherein the latch element rotation includes an orientation for engaging the latch element to assemble the removable housing portion to the fixed housing portion; and
- an audio channel, wherein the audio port is part of the audio channel and the audio channel is formed when the removable housing portion is assembled to the fixed housing portion.

15. (original) The electronic device as defined in claim 14, wherein the latch element rotation further includes another orientation for disengaging the latch element to disassemble the removable housing portion from the fixed housing portion.

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16. (previously presented) The electronic device as defined in claim 14, wherein a gap is formed between the latch element and the recess when the removable housing portion is assembled to the fixed housing portion, and further wherein the audio channel comprises the gap.

17. (original) The electronic device of claim 14, wherein the latching mechanism further comprises:

a secondary latch element, wherein the housing is mechanically coupled between the latch element and at least a portion of the secondary latch element, wherein the secondary latch element comprises at least one secondary latch element audio port aligned with the at least one audio port, and further wherein the audio channel further comprises the at least one secondary latch element audio port.

18. (original) The electronic device as defined in claim 14, a keypad, wherein the keypad is assembled between the fixed housing portion and the removable housing portion.

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19. (previously presented) A method of operating a latching mechanism, comprising the steps of:

mechanically coupling a latch element to a recess of a housing, wherein the recess includes at least one audio port;  
creating an audio channel by engaging the latch element within the housing, wherein the audio ports are part of the audio channel; and  
porting audio through the audio ports of the audio channel.

20. (original) The method of operating a latching mechanism as defined in claim 19, wherein the mechanically coupling step includes forming a gap between the latch element and the housing, and further wherein the audio channel created in the creating step comprises the gap.

21. (original) The method of operating a latching mechanism as defined in claim 19, wherein engaging of the latch element within the housing comprises rotating the latch element to an orientation.

22. (original) The method of operating a latching mechanism as defined in claim 21, wherein the housing comprises a fixed housing portion mechanically to a removable housing portion, the method further comprising the step of:

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assembling a keypad between the fixed housing portion and the removable housing portion in response to the engaging of the latch element within the housing.

23. (original) The method of operating a latching mechanism as defined in claim 21, further comprising the step of:

disengaging the latch element from the housing by rotating the latch element to another orientation.

24. (original) The method of operating a latching mechanism as defined in claim 23, wherein the housing comprises a fixed housing portion mechanically to a removable housing portion, the method further comprising the step of:

disassembling the removable housing portion from the fixed housing portion in response to the disengaging step.

25. (previously presented) The method of operating a latching mechanism as defined in claim 19, further comprising the step of:

mechanically coupling at least a portion of the housing between the latch element and at least a portion of a secondary latch element,

wherein the creating of the audio channel step further comprises

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26. (original) The method of operating a latching mechanism as defined in claim 25, further comprising the step of:

mechanically coupling an audio element to the secondary latch element.

27. (original) The method of operating a latching mechanism as defined in claim 26, further comprising the steps of:

generating an audio output by the audio element; and  
transmitting the audio output through the audio channel.

28. (original) The method of operating a latching mechanism as defined in claim 26, further comprising the steps of:

receiving an audio input; and  
transferring the audio input to the audio element through the audio channel.

29. (canceled)